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**J. Gerard Herbert, Campaign Legal Center  
Fred Wertheimer, Democracy 21**

Rick Santorum for President, Inc. and Nadine  
Maenza in her official capacity as treasurer  
Rick Santorum  
William J. Doré  
Red, White and Blue Fund and Christopher M.  
Marston in his official capacity as treasurer

2 U.S.C. § 441a(a)  
2 U.S.C. § 441i(e)  
11 C.F.R. § 300.61  
11 C.F.R. § 300.2(m)  
11 C.F.R. § 300.2(n)

## Disclosure Reports

None

This matter involves allegations that Rick Santorum and other individuals acting on behalf of Rick Santorum for President, Inc. (the “Santorum Committee”), Santorum’s principal campaign committee for his 2012 presidential campaign, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by directing a \$1 million contribution from Louisiana energy executive William Doré to the Red, White and Blue Fund (the “Fund”), an independent-expenditure-only political committee supporting Santorum’s candidacy. The Complaint alleges

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1 that during a private dinner in January 2012 between Santorum and Doré, Doré told Santorum  
2 that he wanted to contribute \$1 million to his campaign, and Santorum or one of his campaign  
3 staffers suggested that Doré contribute to the Red, White and Blue Fund.

4 In sworn affidavits, Santorum and the Santorum Committee's treasurer deny that they  
5 "solicited" Doré's contribution, and Santorum also specifically denies that he "directed"  
6 contributions from Doré or others to the Fund, noting that Doré contributed to the Red, White  
7 and Blue Fund before his dinner with Santorum. Doré in turn denies under oath that he himself  
8 had a communication with Santorum or any agent of Santorum concerning his contribution to the  
9 Red, White and Blue Fund. Nonetheless, the allegation that Doré may have been directed to  
10 contribute to the Fund through a member of his staff remains factually unrebutted and is  
11 consistent with other record evidence indicating that an employee of Doré engaged in  
12 discussions with members of Santorum's staff the day before Doré made his first \$1 million  
13 contribution to the Red, White and Blue Fund.

14 Accordingly, we recommend that the Commission find reason to believe that Rick  
15 Santorum for President, Inc. and Nadine Maenza in her official capacity as treasurer violated  
16 2 U.S.C. § 441i(e). We propose to conduct an investigation to determine whether in fact any  
17 such violation occurred and recommend that the Commission approve compulsory process as  
18 needed.

## 19 II. FACTUAL AND LEGAL ANALYSIS

### 20 A. Factual Background

21 Rick Santorum was a 2012 Republican primary candidate whose principal campaign  
22 committee was Rick Santorum for President, Inc. The Red, White and Blue Fund is an  
23 independent-expenditure-only political committee that actively supported Santorum in the 2012

1 primaries. It was founded by Nicholas Ryan, reportedly a former Santorum campaign staffer.<sup>1</sup>  
2 William Doré is an individual that in 2012 contributed \$2,500 to Santorum's campaign and a  
3 total of \$2.25 million to the Red, White and Blue Fund, including a \$1 million contribution the  
4 fund received on January 11, 2012.<sup>2</sup>

5 The Complaint alleges that Santorum, the Santorum Committee, or its agents violated  
6 2 U.S.C. § 441i(e)(1)(A) by "directing" a contribution exceeding \$5,000 from Doré to the Red,  
7 White and Blue Fund. Compl. ¶¶ 2, 21. As basis for its allegations, the Complaint relies on a  
8 July 2013 internet "blog" post of the Sunlight Foundation Reporting Group. *See id.* ¶ 4; Kecnan  
9 Steiner, *The \$1 Million Dinner: When Big Donor Bill Doré Meets Rick Santorum*, SUNLIGHT  
10 FOUND. REPORTING GRP., July 1, 2013 [hereinafter Steiner, *\$1 Million Dinner*],  
11 [http://sunlightfoundation.com/blog/2013/07/01/1-million-dinner-when-big-donor-bill-dore-](http://sunlightfoundation.com/blog/2013/07/01/1-million-dinner-when-big-donor-bill-dore-meets-rick-santorum)  
12 [meets-rick-santorum](http://sunlightfoundation.com/blog/2013/07/01/1-million-dinner-when-big-donor-bill-dore-meets-rick-santorum) (last visited Apr. 29, 2014).

13 That report describes Doré's answers to a series of questions concerning his \$2.25 million  
14 contributions to the Red, White and Blue Fund and a private dinner he had with Santorum on  
15 January 22, 2012. *See Steiner, \$1 Million Dinner, supra*, at 1-3. Doré allegedly initially stated  
16 that he told Santorum at their dinner that he wanted to contribute \$1 million to his campaign, and  
17 Santorum told him about the Red, White and Blue Fund. *Id.* at 1. Reportedly, Doré noted the

<sup>1</sup> The Red, White and Blue Fund Response includes an affidavit from Nicholas Ryan, its founder, who states that the fund began operating in October 2011. *See Red, White, and Blue Fund Resp., Aff. of Nicholas Ryan* ¶ 1 (Nov. 8, 2013) ("Ryan Aff."). The Sunlight Foundation post referenced in the Complaint links to an article that identifies Ryan as the former Santorum campaign staffer that founded the Red, White and Blue Fund. *See Jennifer Jacobs, Iowa Operative Nick Ryan at Center of Big Money World of Super PAC's*, DES MOINES REG. (Feb. 23, 2012), <http://blogs.desmoinesregister.com/dmr/index.php/2012/02/23/iowa-political-operatives-company-paid-1-26-million-by-pac-he-created> (last visited May 13, 2014).

<sup>2</sup> *See Red, White and Blue Fund 2012 Feb. Monthly Rpt.* at 10 (disclosing \$1,000,000 contribution on January 11, 2012); *Red White and Blue Fund 2012 Mar. Monthly Rpt.* at 12 (disclosing \$500,000 contribution on February 14, 2012); *Red White and Blue Fund 2012 Apr. Monthly Rpt.* at 12 (disclosing \$250,000 contribution on March 12, 2012 and \$500,000 contribution on March 26, 2012). Doré wired the funds on January 10, 2012, Santorum Resp. at 1, after Ryan provided him with wire instructions that day. Ryan Aff. ¶ 3-5.

1 interviewer's surprise concerning that claim and stated "I don't want to get him in any sort of  
2 problem. . . . I would not want to compromise his future." *Id.* Doré then allegedly clarified that  
3 Santorum in fact had told him to contribute to the Republican Party. *Id.* at 1-2. According to the  
4 report, when the reporter informed Doré that the maximum contribution to a party was \$30,000,  
5 Doré then recanted and claimed that he and Santorum indeed had discussed the Fund. *Id.* at 2.  
6 A few hours later, Doré reportedly modified his account after further reflection and stated that a  
7 female aide to Santorum told him about the Red, White and Blue Fund. *Id.*

8 The Sunlight Foundation piece also recounts Doré's alleged recollection of his  
9 discussions with Santorum and Santorum's staff during and after the dinner. Reportedly, Doré  
10 said that Santorum asked him to talk to Santorum's campaign staff, who were present at the  
11 restaurant, when Doré allegedly informed Santorum during the dinner that he wanted to give "a  
12 million dollars to the campaign." *Id.* at 3. The female Santorum campaign staffer who helped  
13 schedule the dinner then allegedly suggested the next day that Doré should "send his \$1 million  
14 check to the Red, White and Blue Fund and provided him with the address." *Id.*

15 Santorum, his Committee, and Doré filed a joint response ("Santorum Response"),  
16 which, along with the Response of the Red, White and Blue Fund, provides affidavits and  
17 supporting documents detailing their interactions with Doré and his staff. *See* Santorum Resp.;  
18 Red, White and Blue Fund Resp. ("Fund Resp."). Based on the Complaint and the Responses,  
19 the present record before the Commission reflects that on or before January 9, 2012, Santorum  
20 and Doré spoke briefly about setting up an in-person meeting. Santorum Resp., Aff. of Rick  
21 Santorum ¶ 6 (Nov. 26, 2013) ("Santorum Aff.").<sup>3</sup> According to the Sunlight Foundation article,

<sup>3</sup> The Steiner article states that a friend of Doré who works at UBS Financial offered to put him in touch with Santorum. Steiner, *\$1 Million Dinner*, *supra*, at 2. This appears consistent with Santorum's representation that he

1 Doré wanted to meet Santorum in person before donating. Steiner, *\$1 Million Dinner, supra*, at  
2 2. Following his brief discussion with Doré, Santorum asked his assistant to schedule a meeting  
3 with Doré while Santorum was on the campaign trail. Santorum Aff. ¶ 7.

4 At an unspecified time before the January 22, 2012, dinner, the Committee's treasurer,  
5 Nadine Maenza, received an e-mail from a "former Santorum staffer, not associated with the  
6 Santorum campaign, who told [her that she] would be getting a call from someone who wanted  
7 to support Rick Santorum. [Maenza] then received a call from an advisor to Mr. Doré asking  
8 that a meeting be set up."<sup>4</sup> Santorum Resp., Aff. of Nadine Maenza ¶ 5 (Nov. 26, 2012)  
9 ("Maenza Aff."). Following that call, Maenza forwarded the request to Santorum's scheduling  
10 assistant to try to arrange a meeting with Mr. Doré. *Id.* ¶ 7.

11 On January 9, 2012, a Santorum campaign aide named Nancy Garver spoke with Melissa  
12 Fontenot, Doré's Senior Executive Assistant. *See* Santorum Resp., Ex. B at 5. Garver and  
13 Fontenot then exchanged e-mails to arrange an in-person meeting between Santorum and Doré,  
14 which would ultimately take place over dinner on January 22, 2012, in Miami, Florida. *Id.*<sup>5</sup>

15 On January 10, 2012, the day after the contacts between Doré and Santorum's respective  
16 staffs, Doré left a voicemail with and then spoke to Nicholas Ryan, the Executive Director of the  
17 Red White and Blue Fund. Ryan Aff. ¶¶ 2, 3. According to Ryan, Doré expressed interest in  
18 making a \$1 million contribution to the Fund, *id.* ¶ 3, and that same day Doré arranged for a

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"received a phone call from a friend, not associated with [his] campaign, who asked if [he] would meet . . . Doré."  
Santorum Aff. ¶ 5.

<sup>4</sup> Ryan represents that he had no interactions with any agent for Rick Santorum for President about Doré's contribution. Ryan Aff. ¶ 6. As such, it would appear that Ryan was not the former Santorum staffer who called Maenza.

<sup>5</sup> Doré's affidavit does not address whether he personally had any discussions with Santorum's campaign staff, but the blog post indicates that Doré may have had conversations with a female campaign aide to Santorum "who set up his meeting with Santorum." Steiner, *\$1 Million Dinner, supra*, at 2.

1 wire-transfer from his living trust to the fund, which the fund received on January 11, 2012.  
2 Santorum Resp. at 1-2, Ex. 1. Ryan represents that in his discussion with Doré, "Mr. Doré never  
3 indicated how he learned about the Fund and I did not inquire." Ryan Aff. ¶ 5.

4 As noted, during this same period Garver and Fontenot were working together to arrange  
5 the meeting between Santorum and Doré, which eventually occurred on January 22, 2012.

6 Santorum Resp., Aff. of Jesse Biter ¶ 4 (Nov. 25, 2013) ("Biter Aff."). Santorum represents that  
7 he met with Doré in Florida and discussed his positions on issues and why he was running for  
8 president. Santorum Aff. ¶¶ 8-9.<sup>6</sup> Santorum also states that, although counsel had advised him  
9 that he was permitted to solicit up to \$5,000 for the Red, White and Blue Fund, he himself did  
10 not solicit any funds for the Red, White and Blue Fund from Doré or any other individual. *Id.*  
11 ¶¶ 10, 12. Rather, Santorum states that he asked Doré to contribute \$2,500 to the Santorum  
12 Committee, which was his standard policy. *Id.* ¶¶ 13, 14. Santorum further generally denies  
13 that he directed contributions from Doré or any other person to the Red, White and Blue Fund.  
14 *Id.* ¶ 16.

15 In his affidavit, Doré also represents that he himself did not communicate with Santorum  
16 or any agent of the Santorum Committee about his contributions to the Red, White and Blue  
17 Fund; rather, the person he spoke to about the contributions was the executive director of the  
18 Red, White and Blue Fund. Santorum Resp., Aff. of William Doré ¶ 5-6 (Nov. 22, 2013) ("Doré  
19 Aff."). Doré also asserts that Santorum never asked or talked to him about the Red, White and  
20 Blue Fund, *id.* ¶ 7, and that Santorum solicited only a \$2,500 contribution for the Santorum  
21 Committee, which Doré made. *Id.* ¶¶ 8-9.

<sup>6</sup> Although Doré avers that he did not communicate with Santorum regarding his contribution to the Fund and Santorum never talked to him about the Fund, Doré Aff. ¶¶ 5, 7, Santorum states that Doré asked him about the Red, White and Blue Fund during their dinner and that he told Doré that he could not discuss it with him. *Id.* ¶ 11.

1 The Sunlight Foundation piece on which the Complaint relies asserts that Doré  
2 contributed \$1 million to the fund on the same day that a Santorum staffer allegedly provided  
3 Doré with the fund's contact information — and that this occurred the day after Doré spoke with  
4 Santorum at their dinner together. Steiner, *\$1 Million Dinner*, supra, at 3. The timing of those  
5 alleged activities appears factually inaccurate. The Red, White and Blue Fund disclosed  
6 receiving Doré's \$1 million contribution on January 11, 2012. *Id.* But the dinner occurred on  
7 January 22, 2012. Biter Aff. ¶ 4. Doré's reported recollection of events appears to conflate all of  
8 the discussions and contacts between Doré, Santorum, and their respective staffs about his initial  
9 contribution as occurring either during or after his January 22 dinner with Santorum.

10 The Santorum Response relies on this chronological discrepancy in the Sunlight  
11 Foundation piece to refute the allegation that Santorum directly or indirectly solicited or directed  
12 Doré at their dinner to make a \$1 million contribution to the Red, White and Blue Fund: *i.e.*, no  
13 such solicitation or direction could have occurred as a result of the January 22 dinner because  
14 Doré's \$1 million contribution to the Red, White and Blue Fund predates it. Santorum Resp. at  
15 2. Similarly, the Red, White and Blue Fund's Response questions the credibility of the blog post  
16 that forms the basis of the Complaint, given this discrepancy with the factual record. Fund Resp.  
17 at 1-2.<sup>7</sup> As discussed, however, the records and information submitted by the Respondents show  
18 that Doré and his agents had also engaged in discussions with Santorum and his staff on or  
19 before January 9 — that is, prior to his first contribution to the Fund that is the subject of the  
20 Complaint.

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<sup>7</sup> The Fund's Response also states that the Red, White and Blue Fund had no knowledge of any interactions between Santorum, Santorum Committee representatives, and Doré. *Id.* at 2.

**B. Legal Analysis**

The Act and Commission regulations prohibit federal candidates and their agents from soliciting or directing “soft money” — that is, funds that do not comply with the Act’s prohibitions, limitations, and reporting requirements — to political committees or candidates. *See* 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. Commission regulations define “solicit” broadly as “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” 11 C.F.R. § 300.2(m). The regulations define “direct” as “to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value.” *Id.* § 300.2(n).

The Act limits contributions by a person to “any other political committee” (other than authorized candidate committees and national and state party committees) to \$5,000 per calendar year. 2 U.S.C. § 441a(a)(1)(C). Following the decisions in *Citizens United v. FEC*, 588 U.S. 310 (2010), and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), the Commission concluded that independent-expenditure-only political committees may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations. *See* Advisory Op. 2010-11 (Commonsense Ten) at 3. Those decisions, however, did not alter the solicitation restrictions that section 441i imposes on federal candidates and their agents. Thus, federal candidates and their agents can only solicit contributions of up to \$5,000 from individuals for an independent-expenditure-only political committee. *See* 2 U.S.C. § 441a(a)(1)(C); *accord* Advisory Op. 2011-12 (Majority PAC) at 3 (declining to permit



1 candidates to solicit unlimited funds to such committee's based on the limit in 2 U.S.C.

2 § 441a(a)(1)(C)).

3 This matter turns on a question of fact — whether Santorum or agents acting on behalf of  
4 the Santorum Committee solicited or directed Doré, directly or indirectly through his agents, to  
5 contribute to the Red, White and Blue Fund. The basis for the Complaint — the representations  
6 in the piece published on the Sunlight Foundation's website — is the allegation that Doré  
7 asserted alternately that either Santorum himself directed Doré to the Red, White and Blue Fund  
8 or that a Santorum staffer provided Doré with that direction. Compl. at ¶ 5,8; Steiner, *\$1 Million*  
9 *Diner*, *supra*, at 1, 2. The Santorum Response denies that Santorum, Maenza, or Biter engaged  
10 in any such discussions with Doré. Santorum Aff. ¶ 11; Maenza Aff. ¶¶ 9-10; Biter Aff. ¶ 6.

11 Doré also denies that he himself had any communications with Santorum or any agent of  
12 Santorum regarding his contributions to the Red, White and Blue Fund. Doré Aff. ¶ 5. But Doré  
13 does not address in his affidavit whether any member of his personal staff may have been  
14 directed by any member of Santorum's campaign staff to make a contribution to the Fund.  
15 *See id.* Nor does he otherwise offer any explanation how he came to contribute \$1 million to the  
16 Red, White and Blue Fund in particular on January 10, 2012.<sup>8</sup> And the other Responses and  
17 affidavits are also silent concerning communications between other members of the Committee  
18 staff and Doré's employees about his contribution to the Fund.

19 But other evidence submitted with the Responses shows that at least one member of  
20 Doré's staff did engage in discussions with a member of Santorum's staff before — indeed, the  
21 day before — the January 10 date of Doré's contact with the Fund about his initial \$1 million

<sup>8</sup> Doré disavows his prior reported statements to the Sunlight Foundation only generally, and in terms included verbatim in Santorum and Maenza's affidavits — that the "allegations in the FEC complaint are apparently based on hearsay (false) comments from some blog; the allegations in the complaint are false." *Id.* ¶ 3.

1 contribution. Moreover, the Sunlight Foundation piece reports that Doré claimed that a female  
2 campaign staffer directed Doré's attention to the Fund in particular, while the Responses and  
3 exhibits show that, in fact, it was a female Santorum aide, Nancy Garver, who communicated  
4 with Doré's assistant, Fontenot, on behalf of the Santorum campaign the day before Doré first  
5 contacted the Fund. Finally, no other information in the record addresses how Doré came to  
6 focus on the Red, White and Blue Fund as a recipient of his substantial contribution the day after  
7 his staff's contacts with Santorum's staff.

8 For these reasons, the current record gives rise to a reasonable inference that the \$1  
9 million contribution that Doré made to the Red, White and Blue Fund resulted from a direct or  
10 indirect solicitation or direction by a member of Santorum's staff to Doré through a member of  
11 his staff. That allegation is consistent with the factual circumstances described above and is not  
12 refuted by the Responses and supporting affidavits submitted in the matter.<sup>9</sup> Nor do the broad  
13 contentions of Doré, Santorum, and Maenza that the "allegations in the FEC complaint are  
14 apparently based on hearsay (false) comments from some blog; the allegations in the complaint  
15 are false" suggest a contrary result: the Responses and affidavits submitted in this matter concede  
16 many of the same facts described in the Sunlight Foundation post and made the subject of the  
17 Complaint, and those submissions show that a member of Santorum's staff was in contact with  
18 an employee of Doré the day before Doré first contacted Ryan about contributing. Accordingly,  
19 we recommend that the Commission find reason to believe that Rick Santorum for President, Inc.

<sup>9</sup> See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) ("A 'reason to believe' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope."); Statement of Reasons, Comm'rs. Mason, Sandstrom, Smith & Thomas at 2, MUR #960 (Hillary Rodham Clinton for U.S. Senate Expl. Comm.) (noting that "a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint").

1 and Nadine Maenza in her official capacity as treasurer violated 2 U.S.C. § 441i(e) by soliciting  
2 or directing a contribution that exceeded the limits of the Act through an agent of the  
3 Committee.<sup>10</sup>

### 4 III. INVESTIGATION

5 We propose to focus our investigation on the communications between Santorum for  
6 President and its agents and Doré and his agents. Because the affidavits resolve all but a narrow  
7 factual issue — that is, whether Doré or any member of his staff who communicated with  
8 Santorum's agents were directed by them to contribute to the Red, White and Blue Fund — we  
9 do not anticipate a need to conduct an extensive investigation to answer that discrete question.  
10 Although we will seek to conduct our investigation through voluntary means, we recommend  
11 that the Commission approve the use of compulsory process as necessary.

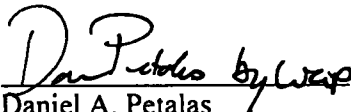
### 12 IV. RECOMMENDATIONS

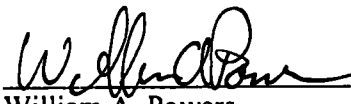
- 13 1. Find reason to believe that Rick Santorum for President, Inc. and Nadine Maenza in  
14 her official capacity as treasurer violated 2 U.S.C. § 441i(e);  
15
- 16 2. Find no reason to believe that William J. Doré and the Red, White and Blue Fund and  
17 Christopher M. Marston in his official capacity as treasurer violated 2 U.S.C.  
18 § 441i(e);  
19
- 20 3. Take no action at this time as to Rick Santorum;  
21
- 22 4. Approve the attached Factual and Legal Analyses;  
23
- 24 5. Approve the use of compulsory process; and  
25

<sup>10</sup> Section 441i(e) does not impose any obligation on Doré or the Red, White and Blue Fund, even were they directed or solicited by a candidate or his staff. Accordingly, we recommend that the Commission find no reason to believe they violated the Act in connection with the contributions here. Concerning Santorum, Doré's affidavit indicates that Santorum only solicited a contribution for his presidential campaign and not for the Red, White and Blue Fund. Doré Aff. ¶¶ 8, 9. Santorum flatly denies under oath that he personally solicited or directed soft money from Doré. Santorum Aff. ¶¶ 10, 16. We therefore do not make a reason-to-believe recommendation concerning Santorum, but recommend that the Commission take no action at this time as to him given that our investigation may reveal further information relevant to the question of his liability.

6. Approve the appropriate letters.

5/15/14  
Date

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

  
William A. Powers  
Assistant General Counsel

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